



April 6, 2000

Mr. Robert R. Ray
Assistant City Attorney
City of Longview
P.O. Box 1952
Longview, Texas 75606-1952

OR2000-1339

Dear Mr. Ray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133760.

The City of Longview (the "city") received a request for "a copy of any documents, reports or statements relative to the Internal Affairs investigation of officer Richard Baldwin." You inform us that the affidavit and warrant of arrest have already been released to the requestor. You claim, however, that the remaining responsive information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.117, 552.130 of the Government Code. We have considered the claimed exceptions and have reviewed the submitted sample of information.¹ You have labeled the information you seek to withhold as "1a" through "1m" and "2" through "5".

As section 552.108 is the most inclusive of the exceptions you raise, we will address it first. Section 552.108, the "law enforcement exception," excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. You state that each piece of information in the

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

submitted documents marked with a "1" relates to a pending criminal investigation.² Accordingly, we find that release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*. Thus, with the exception of the basic front page offense and arrest report information, you may withhold the information you have marked as "1a" through "1m" based on section 552.108(a)(1).³ We note that the city has discretion to release information that is otherwise excepted from disclosure under section 552.108(a)(1), provided that it is not confidential under other law. *See* Gov't Code § 552.007.

You also argue that the requested information includes records that are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 5.08 of article 4495b of Vernon's Texas Civil Statutes. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. We initially note that in enacting the new Occupations Code, the Seventy-sixth Legislature repealed article 4495b of Vernon's Texas Civil Statutes. *See* Act of May 13, 1999, 76th Leg., R.S., ch. 388, § 6, 1999 Tex. Sess. Laws 1431, 2439 (Vernon) (adopting Occupations Code). The former article 4495b of Vernon's Texas Civil Statutes now is codified as the Medical Practice Act at subtitle B of title 3 of the Occupations Code, and the former section 5.08 of article 4495b is codified at chapter 159 of the Occupations Code. Section 159.002 of the Occupations Code provides in relevant part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter . . . may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

²Specifically, you tell us that "the district attorney has indicated that he is investigating the incident in question and intends to bring the matter before a grand jury."

³We note that we agree that the information you have marked as "1a" through "1m" is not basic information under *Houston Chronicle*.

We agree that the documents you have marked as number "4" are confidential under the Medical Practice Act. Therefore, you may only release these records in accordance with the Medical Practices Act.

You also claim that the submitted documents marked as number "5" contain criminal history record information ("CHRI") that is excepted from disclosure under section 552.101. Access to CHRI obtained from the National Crime Information Center ("NCIC") is governed and restricted by federal law. *See* 28 C.F.R. § 20.1, *et seq.*; Open Records Decision No. 565 at 10-12 (1990). The relevant federal regulations permit each state to follow its own applicable law with respect to the CHRI that it generates. Open Records Decision No. 565 at 11-12. Sections 411.083 and 411.089 of the Government Code authorize a criminal justice agency to obtain CHRI from the Texas Crime Information Center ("TCIC"). However, CHRI obtained from the TCIC network may be released by a criminal justice agency only to another criminal justice agency for a criminal justice purpose. Gov't Code § 411.089(b)(1). Thus, CHRI from the NCIC generated by the federal government or another state may be obtained only in accordance with the relevant federal regulations, and CHRI obtained from the Texas Department of Public Safety or another Texas criminal justice agency through the TCIC must be withheld in accordance with subchapter F of chapter 411 of the Government Code. *See* Open Records Decision No. 655 (1997). We agree that section 552.101 of the Government Code, in conjunction with federal and state statutory law, requires the city to withhold any CHRI responsive to the request.

We note that the submitted documents include a peace officer's accident report. The Seventy-fifth Legislature repealed article 6701d of the Texas Civil Statutes and amended section 550.065 of the Transportation Code concerning the disclosure of accident report information. Act of May 29, 1997, 75th Leg., R.S. ch. 1187, 1997 Tex. Sess. Law Serv. 4575 (Vernon) (to be codified at Transp. Code § 550.065). However, a Travis County district court has issued a temporary injunction enjoining the enforcement of the amendment to section 550.065 of the Transportation Code. *Texas Daily Newspaper Ass'n, v. Morales*, No. 97-08930 (345th Dist. Ct., Travis County, Tex., Oct. 24, 1997) (second amended agreed temporary injunction). A temporary injunction preserves the *status quo* until the final hearing of a case on its merits. *Janus Films, Inc. v. City of Fort Worth*, 358 S.W.2d 589 (1962). The supreme court has defined the *status quo* as "the last, actual peaceable, non-contested status that preceded the pending controversy." *Texas v. Southwestern Bell Tel. Co.* 526 S.W.2d 526, 528 (Tex. 1975). The *status quo* of accident report information prior to the enactment of S.B. 1069 is governed by section 47 of article 6701d, V.T.C.S.⁴

⁴Although the Seventy-fourth Legislature repealed and codified article 6701d as part of the Transportation Code, the legislature did not intend a substantive change of the law but merely a recodification of existing law. Act of May 1, 1995, 74th Leg., R.S., ch. 165, §§ 24, 25 1995 Tex. Sess. Law Serv. 1025, 1870-71. Furthermore, the Seventy-fourth Legislature, without reference to the repeal and codification of V.T.C.S. article 6701d, amended section 47 of article 6701d, V.T.C.S., relating to the disclosure of accident reports. Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Sess. Law Serv. 4413, 4414. Because the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which

Section 47(b)(1) provides:

The Department or a law enforcement agency employing a peace officer who made an accident report is required to release a copy of the report on request to:

....

(D) a person who provides the Department or the law enforcement agency with two or more of the following:

- (i) the date of the accident;
- (ii) the name of any person involved in the accident; or
- (iii) the specific location of the accident.

V.T.C.S. art. 6701d, § 47(b)(1). Under this provision, a law enforcement agency “is required to release” a copy of an accident report to a person who provides the law enforcement agency with two or more pieces of information specified by the statute. *Id.* The information is otherwise confidential. The requestor has not supplied the requisite two pieces of information. Because the requestor has not complied with section 47(b)(1) of article 6701d, you need not release the submitted accident report. Because we resolve your request for a decision under sections 552.101 and 552.108 of the Government Code, we do not address your alternative claimed exceptions at this time.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general

enacted the code, the amendment is preserved and given effect as part of the code provision. Gov’t Code § 311.031(c). Thus, the amendment of section 47 of article 6701d, V.T.C.S. is the existing law regarding the availability of accident report information, and may be found following section 550.065 of the Transportation Code. *See also* Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Sess. Law Serv. 4413, 4414.

have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kathryn S. Knechtel
Assistant Attorney General
Open Records Division

KSK/ljp

Ref: ID# 133760

Encl. Submitted documents

cc: Mr. Andy Shaw
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(w/o enclosures)